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Office-Supreme Court, U.S.
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OCT 1 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-3133
DC No. C78-439M
Western Washington (Seattle)

In the Supreme Court of the United States

October Term, 1983

JOHN DEAN, Petitioner

v.

TRANS WORLD AIRLINES, INC., and
AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL, Respondent

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN DEAN,	)	NO. 82-3133
Plaintiff-Appellee,	)	D.C. # C78-439M
	)	ORDER
v.	)	
	)	
TRANS WORLD AIRLINES, INC., and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,	)	
Defendants-Appellants.	)	

Before: BROWNING, Chief Judge, FLETCHER and POOLE, Circuit Judges.

The panel as constituted in the above-entitled case has voted to reject the suggestion for rehearing en banc. No petition for rehearing was requested.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on the suggestion. Fed. R. App. P. 35(b).

The suggestion for rehearing en banc is rejected.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN DEAN,	)	
	)	No. 82-3133
Appellee,	)	
	)	DC No. C78-439M
v.	)	
	)	
TRANS WORLD AIRLINES, INC., and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,	)	OPINION
Appellant.	)	

Appeal from the United States District Court
for the Western District of Washington
Honorable Walter T. McGovern, Judge, Presiding
Argued and Submitted January 7, 1983

Before: BROWNING, Chief Judge, FLETCHER and POOLE, Circuit Judges.*

PER CURIAM:

Appellants Trans World Airlines, Inc. ("TWA") and Air Line Pilots Association, International ("ALPA" or "the union") appeal the district court's grant of summary judgment in favor of appellee John Dean. We reverse.

FACTS

Dean, a pilot employed by TWA, was required by an agency shop agreement between TWA and ALPA to pay an agency fee to ALPA. He protested the charge, which he chracterized as an "unconstitutional tax," in numerous letters to ALPA during 1976 and 1977. He accused the union, among other things, of using his fees for political expenditures in

violation of the Supreme Court's holding in *International Association of Machinists v. Street*, 367 U.S. 740 (1961). Unsatisfied with ALPA's response that his dues were not used for any political or ideological cause, Dean decided unilaterally to reduce his monthly payment to the union. He was sent several delinquency notices, including an itemized bill of all amounts owed. Finally, at ALPA's request and pursuant to the agency shop agreement, TWA discharged Dean.

Dean sued for breach of contract and breach of the duty of fair representation. The district court granted his motion for partial summary judgment, ruling as a matter of law that Dean had raised a proper spending challenge under Street, and that his discharge was therefore unlawful. TWA was then ordered to reinstate Dean.

ANALYSIS

International Association of Machinists v. Street, 367 U.S. 740 (1961), prohibits unions from using the dues of a protesting employee to support political and ideological causes which the employee opposes. In *Street*, however, and later in *Brotherhood of Railway and Steamship Clerks v. Allen*, 373 U.S. 113 (1963), the Supreme Court very clearly held that protesting employees are not released from their dues-paying obligation simply because they believe that a portion of their dues is being used for political or ideological expenditures. The Court stated in *Street*:

> The [employees] who have participated in this action have in the course of it made known to their respective unions their objection to the use of their money for the support of political causes. In that circumstance, the respective unions were without power to use payments thereafter tendered by them for such political causes. However, the union-shop agreement itself is not unlawful. [Citation omitted.] ***The [protesting employees] therefore remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement.***

367 U.S. at 771 (emphasis added). To allow an injunction restraining dues collections might, the Court explained, "interfere with the ... unions' performance of those functions and duties which the Railway Labor Act places upon them to attain its goal of stability in the industry." *Id.*

In *Allen*, the court went one step further and held that

> lest the important functions of labor organizations under the Railway Labor Act, be unduly impaired, *dissenting employees* (at least in the absence of special circumstances not shown here) *can be entitled to no relief until final judgment in their favor is entered.*

373 U.S. at 120 (emphasis added).

If courts cannot enjoin the collection of union dues, then certainly an individual should not be permitted unilaterally to decide to reduce or stop dues payment. Yet the district court in the instant case in essence approved Dean's self-help injunction. Under *Street* and *Allen*, it would have been appropriate for Dean to seek judicial relief by way of either (1) a rebate for political and ideological expenditures or (2) a narrowly drawn injunction prohibiting the use of a portion of his dues for political and ideological expenditures. 367 U.S. at 774-75; 373 U.S. at 120-23. Under *Allen*, the union would have had the burden of proving the proportion of political to total union expenditures. 373 U.S. at 122. Dean did not pursue the proper avenue for redress of his grievance. The district court erred, therefore, when it granted summary judgment in his favor.

The judgment of the district court is reversed and the cause is remanded with instructions to vacate the order granting partial summary judgment and the injunction, and to try the case on the merits.

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*The panel which heard oral argument consisted of Chief Judge Browning and Judges Fletcher and Pregerson. Subsequently, Judge Pregerson recused and pursuant to the Court's procedures Judge Poole was drawn by lot to replace Judge Pregerson. Judge Poole participated by reading the briefs and record and listening to the tape of oral argument.

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

JOHN DEAN, Plaintiff,	)	No. C78-439M
v.	)	
TRANSWORLD AIRLINES, INC. and AIRLINE PILOTS ASSOCIATION, INTERNATIONAL, Defendants.	)	ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER comes on to be heard before the undersigned Judge of the above-entitled Court upon Plaintiff's Second[1] Motion for Summary Judgment against defendants TWA and ALPA on all issues of liability raised in the first and second causes of action of the amended complaint.[2] Also before the Court are the cross-motions for summary judgment of defendants TWA and ALPA.

The first cause of action of the amended complaint alleges that effective August 11, 1977, TWA discharged Dean in violation of the terms of both the collective bargaining agreement and the Railway Labor Act. Dean alleges *inter alia* that his discharge by TWA was unlawful in that the notice provisions of the contract were not satisfied, and that ALPA breached "its duty of fair representation without discrimination" in connection with his discharge.

Dean was discharged by TWA for an alleged delinquency in the payment of service charges to ALPA. The second cause of action alleges that ALPA by commission and omission breached its duty of fair representation without discrimina-

tion in response to Dean's spending claim and his demands for an adjustment in his service charges.

John Dean was employed by TWA as a pilot with the title "First Officer" (co-pilot) from February 1966 until discharged by TWA on August 11, 1977. He became a member of ALPA in 1966 and resigned that membership, effective 1972.

In 1975, ALPA and TWA negotiated an "Agency Shop" agreement, which was incorporated into the collective bargaining agreement as Section 3-B. Section 3-B imposed a "service charge" on non-member pilots "in an amount equal to the Association's regular and monthly dues uniformly required" of ALPA members, effective January 1976.

Dean's written objections commenced with the inauguration of the agency shop service charges. He challenged the use of his service charges for purposes unrelated to the administration of the TWA-ALPA agreement. On March 15, 1976, Dean demanded in writing a reduction and refund under the authority of *I.A.M. v. Street*, 367 U.S. 740 (1961) and *B.R.C. v. Allen*, 373 U.S. 113 (1963). In response to Dean's letter of March 15, 1976, ALPA on March 31, 1976, responded in part as follows:

> We have discussed the Supreme Court cases mentioned in your letter with legal counsel and are advised that those decisions do not require any alteration in your service charge, or in the explanation of its method of billing previously afforded you by letter dated February 17, 1976.

A more inaccurate assessment of ALPA's duties under the *Street* and *Allen* decisions in response to Dean's spending claim was scarcely possible. ALPA's dealings with Dean from January 1976, until his discharge in August 1977, were consistent with that assessment.

That Dean was discharged because of an alleged delinquency in the payment of service charges is not disputed. Dean insisted on monthly billings. His statement of account for July 1976, shows that payment of $53.37 was due by July 25, 1976. His check in the amount of $54.00 payable to ALPA was negotiated well before that date. Nevertheless, his state-

ment of account for August 1976, listed his standing as "bad", for the first time.[3] ALPA's letter dated August 12, 1976, advised Dean that he was delinquent in the amount of $86.78 and demanded that he remit that amount within 15 days or be discharged. The statement of August 1976, showed that $86.78 was due by August 25, 1976.

By letter dated August 9, 1976, Dean had challenged the $86.78 figure, ALPA's assessment of his standing as "bad", and requested an accounting of ALPA's spending vis-a-vis contract negotiations with TWA. From that point forward, the record suggests that Dean's resistance hardened. His payments were no longer sufficient to cover the minimum amounts assessed as due. He renewed his accounting/adjustment demands in September, October, November, December and thereafter. He renewed his reliance on *Street* and *Allen, supra*, and beginning December 1976, in the absence of the information requested, Dean reduced his monthly payment to $10.00, his estimated share of "TWA's contract negotiations and related costs."

Dean contends that he did not receive ALPA's 15-day termination notice dated June 29, 1977, and that he was not aware of his impending discharge until the day following its effective date. In a telephone conversation on August 16, 1977, TWA's Hilly told Dean that he had been in touch with ALPA's Margo Hallisay, who informed Hilly that if Dean were to make payment of $418, his termination would be rescinded. *See* Hilly deposition at pp. 35, 38 and 40. Dean sent ALPA a check for $418.10. ALPA returned the check unnegotiated on August 19, 1977. Dean's statement of account for September 1977, showed a minimum amount due in the sum of $459.06 on a balance of $581.67. On or about September 15, 1977, Dean sent ALPA a check for $459.10. That check was returned to Dean unnegotiated.

Plaintiff earlier invited the Court to conclude that Dean's service-charge obligation did not extend beyond his reasonable share of the cost of ALPA's collective-bargaining activity on behalf of Dean's employer. During oral argument, plaintiff's counsel stated that a determination of that question is not yet required if the Court should now rule as it does here. The Court is of the opinion that Dean's "failure to represent

fairly" claim should be resolved without reaching the question of a dissenter's obligation, if any, to contribute to the cost of ALPA's collective bargaining industry-wide, and therefore declines to decide that question. As will later appear, we are primarily concerned here not with the exact amount of Dean's service charges, but with ALPA's outright refusal to make any adjustment whatsoever in response to the plaintiff's spending claim. If necessary, the question of the amount of plaintiff's service charges can hereafter be addressed.

The *de lege* amount of Dean's service charge delinquency, if any, at the time of his discharge has not been established. That would have required a determination of (1) the total amount of ALPA's expenditures during the period between January 1, 1976 and August 11, 1977, and (2) what portion of that amount was spent by ALPA on collective bargaining contract administration and grievance adjustment. A protesting pilot would be entitled under applicable case law to recover from his dues or service charge payments in the same proportion that ALPA's expenditures for other purposes bore to ALPA's total expenditures. *See Street* at 774-75, and *Allen* at 121-22.

However, the amount of Dean's delinquency, if any, indeed, whether he was or was not delinquent, is not material to the fair representation issue, and the Court so holds.

ALPA concedes that at all times material, it spent money for purposes other than collective bargaining. *See*, for example, the stipulation filed June 25, 1981, paragraph 16. *See* ALPA's brief at page 6, in response to plaintiff's motion to compel answers to interrogatories and request for production of documents, filed in the cause on February 4, 1981. At least with respect to political expenditures, ALPA's duty to Dean under the *Street* and *Allen* decisions is clear and unmistakable.[4] *See also Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). Dean, in 1976, deserved the benefit of the rebate policy implemented and expanded by ALPA between August 1978 and November 1979. The fact that Dean perceived his service charge obligation as limited to his fair share of the costs incurred by ALPA only in connection with its agreement with TWA, did not relieve ALPA of its affirmative duties under the above authorities.

The Court includes that in refusing Dean's request for an adjustment, ALPA breached its duty to represent him fairly. *Seay v. McDonnell Douglas Corporation*, 427 F.2d 996 (9th Cir. 1970); *Seay v. McDonnell Douglas Corporation*, 533 F.2d 1126 (9th Cir. 1976); and *Ellis v. BRAC*, 91 LRRM, 2339, 2343 (S.D. Ca. 1976). When ALPA proceeded against Dean as delinquent in the payment of his service charges, it did so with unclean hands.

A ruling that Dean be required to pay forthwith all sums required under the agreement, including arrears, if any, that are owing for the period January 1, 1976 to date of reinstatement, is supported by the Street opinion at 771 and the *Allen* opinion at 120. This Court is of the opinion that the rationale expressed in *Allen* is equally compelling here. Within 15 days of the entry of this Order, ALPA shall advise Dean of the dollar amount of the balance currently due on his service charges. Upon receipt of that information, Dean shall within 15 days pay ALPA that sum of money.[5] If he fails to do so, his action shall be dismissed.

Having concluded that material factual issues as to plaintiff's fair representation claim do not exist, the Court finds that his discharge, whether or not in derogation of the notice provisions of Section 3-B of the agreement, was unlawful as a matter of law as well.

The Court, having considered the entire record, including but not limited to the motions, memoranda, affidavits, stipulations and exhibits, having heard the instant motions argued in open court, and being fully advised, NOW THEREFORE

IT IS ORDERED that the motions of defendants TWA[6] and ALPA for summary judgment be and the same are hereby DENIED; and

IT IS ORDERED that the motion of the plaintiff for summary judgment on all issues of liability raised in the first and second causes of action of the amended complaint be and the same is hereby GRANTED.

The Clerk of the Court shall direct uncertified copies of this Order and the Judgment entered pursuant thereto to counsel of record.

DATED this 8th day of September, 1981.

WALTER T. McGOVERN
Chief United States District Judge

---

1 Prior motions for summary judgment against TWA and ALPA were filed on May 10, 1979 and denied on June 26, 1979. Those motions sought judgment only on plaintiff's unlawful discharge claim. *See* memorandum in support at p. 1, lines 20-26.

2 The Amended Complaint for Breach of Contract and Breach of Duty of Fair Representation was filed on September 25, 1980.

3 No statement of account for June 1976, or related appear in the record. *See* Agreed Exhibit 20 to Recital of Stipulated Facts, and the affidavit of John Dodge.

4 ALPA asks this Court to read out of the plaintiff's protests any objection under the Street and Allen cases to ALPA's non-collective bargaining expenditures. The record before the Court permits of no such reading.

5 It remains to be determined whether Dean is entitled to a refund under the formula developed in the decisions discussed in this Order. *See also Beck v. C.W.A., 468 F.Supp. 93 (D. Md. 1979); Racine Education Association v. Racine Unified School District*, 82 F.R.D. 461 (E.D. Wis. 1979); and *Ball v. City of Detroit*, 269 N.W.2d 607 (Mich. 1978).

6 TWA argues that it had no option in the discharge of the plaintiff; that its contract with ALPA required TWA to discharge the plaintiff when ALPA notified TWA that the plaintiff was delinquent in the payment of his service charges. That reasoning might support a claim over by TWA against ALPA, but it constitutes no defense for TWA against the plaintiff's unlawful discharge claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

UNITED STATES DISTRICTCOURT

WESTERN DISTRICT OF WASHINGTON

JOHN DEAN,	)	
	)	
Plaintiff,	)	NO. C78-439M
	)	
v.	)	
	)	
TRANS WORLD AIRLINES, INC., and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW
	)	
Defendants.	)	

The plaintiff's Motion for Permanent Injunction having come on for consideration and the Court having considered the entire record including but not limited to the authorities, argumentation and affidavits advanced in support of and opposition to the instant motion, and having entered its Order granting the relief requested, the Court makes and enters what it finds to be undisputed findings of fact together with its conclusions of law which follow from those undisputed findings of fact, all in support of the Court's Permanent Injunction.

UNDISPUTED FINDINGS OF FACT

1. Plaintiff was employed by TWA as a pilot with the title "First Officer" (co-pilot) from February 1966 until discharged by TWA on August 11, 1977.

2. Plaintiff became a member of ALPA in 1966 and resigned his membership, effective in 1972.

3. In 1975, ALPA and TWA negotiated an agency shop agreement, imposing a service charge on nonmember pilots equal in amount to ALPA's regular membership dues.

4. Plaintiff challenged the use of his service charges for purposes unrelated to the administration of the TWA-ALPA agreement and made repeated demands for an accounting under the authority of *I.A.M. v. Street*, 367 U.S. 740 (1961) and *B.R.C. v. Allen*, 373 U.S. 113 (1963).

5. ALPA refused to make any adjustment in plaintiff's service charges in response to his spending claim, although it did expend funds for purposes other than collective bargaining, and later implemented a rebate policy.

6. Plaintiff reduced his service charge payments and on August 11, 1977, he was discharged by TWA for his alleged delinquencies therein.

7. ALPA computed the balance alleged due on plaintiff's service charges as of August 11, 1977, at $527.67, which sum has now been paid to ALPA by plaintiff.

8. Plaintiff's first cause of action alleged unlawful discharge. The second alleged ALPA's failure to represent him fairly. On September 8, 1981, the Court granted the plaintiff's motion for summary judgment on all issues of liability raised in his first and second causes of action.

9. On October 9, 1981, TWA in writing denied plaintiff's request for reinstatement.

10. On December 8, 1981, in an *addendum* to its Order of September 8, 1981, the Court, having observed that plaintiff is assuredly entitled *inter alia* to reinstatement, urged the defendents to commence negotiations for the development of an appropriate remedy in the case at bar.

11. Defendants take the position that all remedy issues should be resolved together in one final judgment to avoid multiple appeals and that no compelling reasons have been presented that would warrant the grant of immediate innunctive relief. *See* Daniel S. Kozma's letter to the Court, dated December 16, 1981, a copy of which follows as Attachment A. Said letter is incorporated herein by reference as if fully set forth.

12. In its memorandum in opposition to the injunctive relief requested, ALPA submits that the plaintiff's "only possible injury is his loss of earnings," and contends that a showing of irreparable harm and the inadequacy of a remedy at law has not been made. Further that the Norris-LaGuardia

Act, 29 U.S.C. § *et seq.* prohibits the grant of injunctive relief in cases growing out of a labor dispute except after hearing and unless supported by detailed findings of the Court.

13. The plaintiff was discharged by TWA on August 11, 1977, at the age of 44. Plaintiff will be 49 years old on March 3, 1982.

CONCLUSIONS OF LAW

1. Defendant ALPA breached its duty of fair representation to plaintiff in refusing his request for an adjustment of his service charges.

2. In proceeding against plaintiff as delinquent in the payment of his service charges, ALPA did so with unclean hands.

3. The subsequent discharge of plaintiff, whether or not in derogation of the notice provisions of Section 3-B of the labor agreement, was unlawful as a matter os law.

4. The prerequisites for the injunctive relief requested have been satisfied.

5. The likelihood of success on the merits of his lawsuit weigh heavily in plaintiff's favor.

6. The plaintiff is in immediate danger of irreparable harm in that his professional career as a commerical airline pilot is in jeopardy by reason of his unlawful discharge.

7. The plaintiff's possible injuries are not limited to the temporary loss of income.

8. A Norris-LaGuardia "labor dispute" barring injunctive relief does not arise here out of a discharge which is unlawful as a matter of law.

9. Reinstatement here will vindicate the processes of the Railway Labor Act for the final resolution of minor disputes.

10. The plaintiff when qualified is entitled to reemployment with TWA in a position substantially equivalent to that which he would have attained had he not been discharged.

11. The plaintiff is entitled to reinstatement and the defendants must initiate the process of his reinstatement forthwith.

ALPA and TWA relieved themselves of a troublesome employee five years ago next August. In discharging or causing the discharge of the plaintiff, ALPA knowingly and deliberately breached its duty to represent him fairly.

The defendants' liability is clear. The plaintiff's injuries are grave. Further delay in redressing those injuries offends even the elementary fairness to which the Court is committed.

The mandatory relief requested must be granted.

The Clerk of the Court shall direct copies of the foregoing Findings of Fact and Conclusions of Law together with the Court's Order on Motion for Permanent Injunction to counsel of record.

DATED this 3rd day of February, 1982.

WALTER T. McGOVERN
Chief United State District Judge

ORDER ON MOTION FOR PERMANENT INJUNCTION

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JOHN DEAN,	)	
	)	
Plaintiff,	)	No. C78-439M
	)	
v.	)	
	)	
TRANS WORLD AIRLINDS, INC., and AIRLINE PILOTS ASSOCIATION, INTERNATIONAL,	)	ORDER ON MOTION FOR PERMANENT INJUNCTION
	)	
Defendants.	)	

THIS MATTER comes on for consideration by the undersigned Judge of the above-entitled Court upon plaintiffs Motion for Injunctive Relief in the form of mandatory reinstatement. The motion was originally noted for the Court's consideration on November 13, 1981, after the Court had entered judgment in favor of the plaintiff on all issues of liability raised in the first and second causes of action of the

amended complaint. For reasons which appear in its Supplemental Order of December 8, 1981, the Court continued its consideration of the instant Motion for Permanent Injunction to December 18, 1981.

The plaintiff seeks reemployment in a position substantially equivalent to that which he would have attained had he not been discharged, based upon the authority of *Brady v. Trans World Airlines, Inc.*, 401 F.2d 87, 103 (3rd Cor. 1968), *cert. denied*, 393 U.S. 1048 (1969) and *Burke v. Compania Mexicana de Aviacion, S.A.*, 433 F.2d 1031, 1034 (9th Cir. 1970).

Defendant ALPA opposes the relief requested on the grounds, *inter alia*, that a showing of irreparable harm and the inadequacy of a remedy at law has not been made. Further that such injunctive relief is prohibited by the Norris-LaGuardia Act in cases growing out of a labor dispute, except after hearing the testimony of witnesses in open court and after findings of fact by the Court. Title 29, United States Code, Section 107.

Page 2 of ALPA's memorandum in opposition to the plaintiff's motion for permanent injunction reads, in part, as follows:

> ALPA submits that the only possible injury is his loss of earnings, which Plaintiff concedes he has coped with for four years.

ALPA cites authority for the proposition that "the temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury."

This Court does not share the opinion that the plaintiff's only possible injury is his temporary loss of income. The plaintiff's career as a commercial airlines pilot was interrupted, suspended unlawfully in August 1977. It remains to be determined whether his career was effectively terminated at that time. And even if an adequate legal remedy can be fashioned for such an injury, the Court is not inclined to deprive the plaintiff of an immediate opportunity to salvage his career as a commercial airlines pilot, if he can.

The Court is of the opinion that the plaintiff's professional career is in jeopardy by reason of his unlawful discharge and that he is accordingly in immediate danger of irreparable harm.

ALPA's reliance on the Norris-LaGuardia Act is misplaced. ALPA's case law itself supports the conclusion that in the instant circumstances, a Norris-LaGuardia "labor dispute" does not arise out of a discharge which is unlawful as a matter of law. *Order of Railroad Telegraphers v. Chicago & North Western Railway, Co.*, 362 U.S. 330, 340-341 (1960).

Conceding that in a proper case, the Norris-LaGuardia Act is no bar to the use of injunctive relief to vindicate the processes of the Railway Labor Act, *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Co.*, 353 U.S. 30, 40-41 (1957), ALPA suggests that no violation of a basic command of the Railway Labor Act was made out in the case at bar.

On the contrary, ALPA acts as bargaining agent for TWA pilots under the Railway Labor Act. The Act imposes a duty on such an agent to exercise the power conferred upon it in behalf of those for whom it acts.

> The use of the word 'representative,' as thus defined and in all the contexts in which it is found, plainly implies that the representative is to act on behalf of all the employees which, by virtue of the statute, it undertakes to represent.
>
> *Steele v. Louisville & Nashville Railroad, Co.*, 323 U.S. 192, 199 (1944).

In discharging, or causing the discharge of the plaintiff unlawfully, ALPA breached its statutory duty. Compare, *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768, 773 (1952). ALPA's breach gave rise under the Railway Labor Act to the plaintiff's first cause of action.

Reinstatement here can in no way upset the natural interplay of the competing economic forces of capital and labor. *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Co., supra*, 353 U.S. at 40. It will, in fact, vindicate the processes provided by the Railway Labor Act for the final resolution of minor disputes. *Federal Express Corporation v. Teamsters Union Local #85*, 617 F.2d 524, 526 (9th Cir. 1980).

It being the opinion of the Court that the plaintiff is entitled under the authorities advanced to an order requiring his reemployment when qualified in a position substantially equivalent to that which he would have attained had he not been discharged, NOW, THEREFORE

IT IS ORDERED that defendants Trans World Airlines and the Airline Pilots Association initiate immediately the process of plaintiff's reinstatement.

The Clerk of the Court shall direct copies of this Order together with the Findings of Fact and Conclusions of Law entered in support of it to counsel of record.

DATED this 3rd day of February, 1982.

WALTER T. McGOVERN
Chief United States District Judge

RECITAL OF STIPULATED FACTS BETWEEN PLAINTIFF AND AIR LINE PILOTS ASSOCIATION INTERNATIONAL; EXHIBITS 3, 10, 11, 12, 15, 16, 78, 82.

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

JOHN DEAN, Plaintiff,	)	NO. C78-439M
v.	)	RECITAL OF STIPULATED FACTS BETWEEN PLAINTIFF AND DEFENDANT AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
TRANS WORLD AIRLINES, INC., and AIR LINE PILOTS ASSOCIATION, Defendants.	)	

Plaintiff, John Dean, and Defendant, Air Line Pilots Association, International, by agreement of their respective attorneys, hereby stipulate, for the purpose of cross motions for summary judgment to be filed by the parties in this action, that the following facts are deemed to be true, and form a part of the factual record before the Court for this purpose. The parties further stipulate that the documents attached hereto, and identified herein as Agreed Exhibits, are true and accurate copies of the original documents and are part of the factual record before the Court. Accurate, typed transcriptions of originial handwritten documents are attached to copies of the original for the convenience of the Court. The phrase "at all material times" means since December 31, 1975.

The Parties

1. Plaintiff, John Dean was employed as a pilot with the title "First Officer" (co-pilot) by Defendant Trans World Airlines, Inc. ("TWA"), from February, 1966 until his employment was terminated by TWA on August 11, 1977.

2. Defendant Air Line Pilots Association, International ("ALPA") is an unincorporated association maintaining its headquarters office at 1625 Massachusetts Avenue, N.W. Washington, D.C. 20036. ALPA is the recognized exclusive collective bargaining "representative", within the meaning of the Railway Labor Act, 45 U.S.C. § *et seq.*, for all airline pilots employed by twenty-nine air carriers in the United States, in-

cluding Trans World Airlines, Inc. ALPA negotiates, maintains and administers separate collective bargaining agreements with each of the 29 airlines. These agreements establish the wages, hours and other terms and conditions of employment for the airline pilots employed by each airline. The total number of pilots represented by ALPA exceeds 30,000. At all material times, ALPA has been the collective bargaining representative for all airline pilots employed by TWA.

3. TWA is an air carrier within the meaning of the Railway Labor Act, 45 U.S.C. §151, *et seq.*, and is incorporated under the laws of the State of Delaware, with its principal office at 605 Third Avenue, New York, New York, 10016.

4. Plaintiff, John Dean, became a member of ALPA in February, 1966. During the time he was an ALPA member Plaintiff satisfied his dues obligations to ALPA in accordance with the provisions of Article IX of the ALPA Constitution and By-Laws. A copy of the ALPA Constitution and By-Laws in effect for the year 1976 is attached as Agreed Exhibit 1. Effective September 20, 1972 Plaintiff resigned his membership in ALPA and since that time he has not been a member of ALPA.

The following letters identified by date, sender and addressee, were mailed by the sender to the addressee on or shortly after the designated date and were received by the addressee shortly thereafter. These letters concern Plaintiff's resignation of membership in ALPA and are identified as Agreed Exhibits as follows:

Date	From	To	Agreed Exhibit No.
9-20-72	Dean	J.J. O'Donnell (ALPA)	2
10-4-72	L.T. Jones (ALPA)	Dean	3
10-10-72 (misdated 9/10/72)	Dean	L.T. Jones (ALPA)	4
12-2-72	Dean	J.J. O'Donnell (ALPA)	5
1-8-73	J.J. O'Donnell (ALPA)	Dean	6

1-15-73	Dean	J.J. O'Donnell (ALPA)	7
2-5-73	J.J. O'Donnell (ALPA)	Dean	8
2-20-73	L.T. Jones (ALPA)	Dean	9

Agency Shop; Service Charge Requirement

5. In 1975, ALPA and TWA negotiated an "Agency Shop" agreement, which was incorporated into the ALPA/TWA collective bargaining agreement as Section 3-B. A copy of this agreement is identified as Agreed Exhibit 10. Section 3-B became effective on January 1, 1976. By early 1976, Plaintiff had a copy of the ALPA/TWA collective bargaining agreement, and was familiar with the provisions of Section 3-B.

6. On November 1 4, 1975, and December 19, 1975, Robert Sherman, a TWA pilot, ALPA member, and Secretary/-Treasurer of the ALPA/TWA Master Executive Council, sent letters to Plaintiff regarding the imposition of the agency shop agreement. Plaintiff received letters which are identified respectively as Agreed Exhibits 11 and 12.

7. Each of the following letters, identified here by date, sender, and addressee, was mailed by the sender via United States mail on or shortly after its listed date, and was received by the addressee. A copy of each letter is identified as a numbered Agreed Exhibit as shown.

Date	From	To	Agreed Exhibit No.
1-22-76 (Misdated 12-22-76)	Dean	ALPA	13
2-17-76	Magee (ALPA)	Dean	14
3-15-76	Dean	ALPA	15
3-31-76	Magee (ALPA)	Dean	16
4-10-76	Dean	ALPA	17

8-9-76	Magee	ALPA	18
8-12-76	Magee (ALPA)	Dean	19
9-14-76	Dean	ALPA	20
10-12-76	Dean	ALPA	21
11-5-76	Marcione (ALPA)	Dean	22
11-14-76	Dean	ALPA	23
12-15-76	Dean	ALPA	24
1-15-77	Dean	ALPA	25
2-13-77	Dean	ALPA	26
3-17-77	Leanna Krall (ALPA)	Dean	27
3-25-77	Magee (ALPA)	Dean	28
3-27-77	Dean	ALPA	29
4-13-77	Dean	TWA	30
4-15-77	Dean (ALPA)	Magee	31

8. In early 1977 a copy of the "ALPA Annual Dues Payment Plan" was sent to and received by Plaintiff. A copy of this document is Agreed Exhibit 32.

9. Each of the following ALPA "Statements of Account," identified here by the "statement date" shown on the statement, was mailed by ALPA to Plaintiff via United States mail on or about the date indicated, and was received by Plaintiff. A copy of each statement is identified as a numbered Agreed Exhibit as shown.

Date	Agreed Exhibit Number
January 2, 1976	33
February 2, 1976	34
March 1, 1976	35

April 1, 1976	36
May 1, 1976	37
July 1, 1976	38
August 1, 1976	39
September 1,1976	40
October 1, 1976	41
November 1, 1976	42
December 1, 1976	43
January 1, 1977	44
February 1, 1977	45
March 1, 1977	46
April 1, 1977	47
May 1, 1977	48
June 1, 1977	49
July 1, 1977	50
August 1, 1977	51
September 1, 1977	52

10. A "Financial Account Summary for the Year Ending 12/31/76" was mailed by ALPA to Plaintiff via United States mail in early 1977, and was received by Plaintiff. A copy of this document is identified as Agreed Exhibit 53.

11. Each of the following checks from Plaintiff to ALPA, identified here by date and amount, was mailed by Plaintiff to ALPA via United States mail, was cashed by ALPA, and credited to Plaintiff's service charge account. Beginning in December 1976 and until his termination from employment in August, 1977, Plaintiff reduced his monthly payments to ALPA to $10.00 per month. A copy of each check (front and back) is identified as an Agreed Exhibit as shown:

Date	Amount	Agreed Exhibit No.
January 22, 1976	$33.50	54

February 15, 1976	37.00	55
March 15, 1976	37.00	56
April 15, 1976	37.00	57
May 15, 1976	36.00	58
July 15, 1976	54.00	59
August 15, 1976	37.00	60
September 15, 1976	37.00	61
October 15, 1976	37.00	62
November 15, 1976	35.00	63
December 15, 1976	10.00	64
January 15, 1977	10.00	65
February 15, 1977	10.00	66
March 15, 1977	10.00	67
April 15, 1977	10.00	68
May 15, 1977	10.00	69
June 15, 1977	10.00	70
July 15, 1977	10.00	71

12. In 1978, H.E. Bagnall and fourteen other pilots, not members of ALPA, including, in addition to Bagnall, seven other pilots employed by TWA (Bauer, Hilbink, Kirchoff, LeBoutellier, Longwish, Murray and Vasilaros) filed suit against ALPA challenging, upon a variety of grounds, the imposition of service charges by ALPA upon nonmember pilots. *Bagnall* v. *ALPA*, Civil Action No. 78-128-A; 626 F.2d 336 (4th Cir. 1980). On September 8, 1978, ALPA Treasurer, John Magee wrote to H. E. Bagnall. A copy of this letter is identified as Agreed Exhibit 72. This was the first time ALPA calculated or credited a rebate to any nonmember pilot in response to an objection to alleged "political" expenditures by ALPA.

ALPA Expenditures and Activities

13. At all material times, all pilot payments to ALPA — whether consisting of dues from members or service charges

from nonmembers — have been deposited into a single, common, unsegregated treasury.

14. At all material times, pilot dues and service charge payments to ALPA have been ALPA's principal source of income. Aside from these funds, and the interest earned on them, ALPA has two other sources of income, as described below:

(a) In cooperation with private insurers, ALPA sponsors several insurance programs. To compensate for administering these programs, ALPA receives a portion of the premiums which offsets a major portion of the cost of administration.

(b) ALPA publishes a magazine entitled "Air Line Pilot." As a result, ALPA receives advertising and subscription income which offsets a major portion of ALPA's publishing and distribution costs for that magazine.

15. At all material times, all of ALPA's expenditures, except as is set forth in paragraphs 14(a) and 14(b) above, have been made from a single common treasury described in paragraph 13.

16. At all material times, ALPA has in each calendar year spent money from its treasury for the following purposes:

(a) Negotiation and administration of collective bargaining agreements at each of the 29 airlines where ALPA represents the pilot employees, including TWA.

(b) Defense and prosecution of litigation having as its subject matter the negotiation and administration of collective bargaining agreements and the settlement of adjustment of grievances or disputes on behalf of the pilot employees at each of 29 airlines where ALPA represents the pilot employees, including TWA.

(c) Settlement and adjustment of pilot grievances at each of the 29 airlines where

ALPA represents the pilot employees, including TWA.

(d) Attending conventions or business meetings of other labor unions and organizations including the AFL-CIO.

(e) Preparation, publication and distribution of other ALPA periodicals and publications other than the "Air Line Pilot", containing news and commentary relating to matters of concern to air line pilots.

(f) Recruiting new members and encouraging existing members to retain ALPA membership at each of the 29 airlines where ALPA represents the pilots, including TWA.

(g) Per capita payments, based upon ALPA membership, required for AFL-CIO affiliation.

(h) Charitable contributions (to organizations such as the United Way and the American Heart Association.)

(i) Funding scholarships for children of deceased or medically retired ALPA members.

(j) Providing rent-free space for the operation of a credit union for the benefit of ALPA members.

(k) Performance of administrative and accounting services for the ALPA Political Action Committee, an organization separate from ALPA and funded by voluntary contributions from ALPA members which works to influence legislative and administrative policy pertaining to the airline industry.

(l) Compensation of ALPA members and employees for time spent in working to influence legislative and administrative policy affecting pilots or issues of collec-

tive bargaining within the airline industry.

(m) Attached hereto as Agreed Exhibits 73, 74 and 75 are Financial Statements prepared by ALPA for the years 1976, 1977 and 1978.

17. At all material times, ALPA expenditures relating to individual airlines have fluctuated markedly from year to year depending upon whether contract negotiations are occurring, the number of grievances filed by pilots, the difficulty presented in adjusting, settling or arbitrating those grievances, and the level of other representation activities during each year.

Plaintiff's Residence

18. In December of 1976, Plaintiff purchased Suite 401 in Capitol Lake Towers, a condominium, at 1910 Evergreen Park Drive S.W., Olympia, Washington 98502. Plaintiff completed his move to this condominium suite in March of 1977 and has lived there since that time. Prior to moving to Olympia, Plaintiff lived in Kansas City, Missouri.

19. Since July, 1976, Suite 303 of Capitol Lake Towers has been owned by Charles Dean, Plaintiff's brother, who has never lived there. Later that year, Mary Dean, Plaintiff's mother, moved into this condominium suite, and she has lived there since that time.

20. Capitol Lake Towers has a central mailroom. In this mailroom are individual, locked mailboxes for each condominium unit. Below the mailboxes is a rack where the mailman places mail which is too large for the mailbox.

21. During 1977, Mary Dean had a key to Plaintiff's apartment at Capitol Lake Towers. Also, during the period when Plaintiff was away on flights for TWA in 1977, Mrs. Dean would occasionally pick up mail left outside his mailbox at Capitol Lake Towers, and leave such mail in Plaintiff's apartment.

22. In 1977, prior to his termination from TWA, Plaintiff usually kept a key to his mailbox in a drawer in his dresser in his apartment at Capitol Lake Towers, and Mary Dean knew this.

23. On one occasion after Plaintiff had moved to Olympia in 1977, when Plaintiff's mailbox at Capitol Lake Towers became so full with mail that it was overflowing, Mary Dean used Plaintiff's mailbox key, removed his mail, and placed it in his apartment.

24. In November, 1976, Mr. Glenn C. Davis and his wife, Bunche Davis, were employed by the Capitol Lake Towers Owners Association. Their employment at Capitol Lake Towers terminated in April 1978. While they were employed at Capitol Lake Towers, Davis and his wife lived at Capitol Lake Towers and they often worked out of an office located on the same floor and 30 feet from the central mailroom. A copy of the Davis' employment agreement with the Owner's Association of Capitol Lake Towers, executed on March 17, 1977, is Agreed Exhibit 76.

25. On July 2, 1977, Bunche Davis signed for a registered or certified letter which the postal receipt identifies as being addressed to John Dean at Capitol Lake Towers. A copy of this receipt is Agreed Exhibit 77.

26. During the year 1977 Plaintiff was away from home on TWA flights for an average of thirteen days per month. On some occasions he would be away from home on TWA flights for five consecutive days.

27. During the same period, a substantial majority of TWA pilots were also away from home on TWA flights for approximately thirteen days per month. On some occasions during this period, these pilots would be away from home on TWA flights for five consecutive days.

The May 5th and May 15th Letters

28. On or about May 5th, 1977, ALPA Treasurer John Magee sent a letter to Plaintiff by first class United States mail. Plaintiff received this letter sometime prior to May 15th, 1977. A copy of this letter is identified as Agreed Exhibit 78.

29. On May 15, 1977, Plaintiff sent a letter to John Magee in reply to the letter described in paragraph 28. ALPA received this letter sometime in May. A copy of this letter is identified as Agreed Exhibit 79.

Plaintiff's Termination

30. On June 29, 1977, ALPA Treasurer Magee sent a letter to Plaintiff via United States certified mail, return receipt requested. A copy of this letter is identifed as Agreed Exhibit 80.

31. On July 5, 1977, Mr. Glenn C. Davis signed a postal receipt for the letter described in paragraph 30, and accepted this letter from the mailman. A copy of this receipt, received by ALPA in mid-July, 1977, is identified as Agreed Exhibit 81.

32. On July 29, 1977, ALPA Treasurer Magee sent a letter to TWA Staff Vice President for Labor Relations J.C. Hilly, with a copy to Plaintiff via United States registered mail, return receipt requested. A copy of this letter is identified as Agreed Exhibit 82. On August 5, 1977, the mailman left a Notice of Attempted Delivery regarding this letter in Plaintiff's mailbox at Capitol Lake Towers. A copy of this notice is identified as Agreed Exhibit 83.

33. On August 3, 1977, John F. Rhodes, TWA's General Manager-Flying in Los Angeles, sent a letter to Plaintiff via certified mail, return receipt requested. A copy of this letter is identified as Agreed Exhibit 84. On August 6, 1977, the mailman left a Notice of Attempted Delivery regarding this letter in Plaintiff's mailbox at Capitol Lake Towers. A copy of this notice is identified as Agreed Exhibit 85. A second Notice of Attempted Delivery regarding this letter was left in Plaintiff's mailbox by the mailman on August 11, 1977. A copy of this notice is identified as Agreed Exhibit 86.

34. On August 12, 1977, TWA's Rhodes sent a letter to Plaintiff, via United States certified mail, notifying him that his employment with TWA had been terminated effective August 11, 1977, and informed ALPA of TWA's action. A copy of this letter is identified as Agreed Exhibit 87.

35. On the evening of August 12, 1977, Plaintiff spoke to TWA's Rhodes by telephone. They discussed Dean's discharge.

36. On August 14, 1977, Plaintiff sent identical mailgrams to TWA's Rhodes in Los Angeles and to TWA's Staff Vice President for Labor Relations in New York. The mailgrams

were received on August 15, 1977. Copies of the mailgrams are identified as Agreed Exhibit 88.

37. On August 15, 1977, Plaintiff sent a letter to TWA's Rhodes, via United States mail. A copy of this letter is identified as Agreed Exhibit 89. Plaintiff's check to ALPA dated August 15, 1977, for $10.00, a copy of which is identified as Agreed Exhibit 90, was returned by ALPA to Plaintiff.

38. On August 16, 1977, a second Notice of Attempted Delivery regarding Magee's letter of July 29 was left by the mailman in Plaintiff's mailbox. A copy of this notice is identified as Agreed Exhibit 91. On this same date, Plaintiff signed for the aforementioned letters of July 29, (Agreed Exhibit 82), August 3 (Agreed Exhibit 84), and August 12 (Agreed Exhibit 87) at the Olympia Post Office.

39. On August 16, 1977, Plaintiff sent a letter to ALPA, via United States mail, and enclosed a check to ALPA for $418.20. A copy of this letter is identified as Agreed Exhibit 92, and a copy of this check is identified as Agreed Exhibit 93.

40. On August 18, 1977, Plaintiff sent a letter to TWA's Staff Vice President for Labor Relations, with a copy of TWA's Flight Operations Department, via United States mail. The letter, and the copy, were received by the intended addressees. A copy of this letter is identified as Agreed Exhibit 94.

41. On August 19, 1977, John Dodge of ALPA sent a letter to Plaintiff, via United States mail, returning Plaintiff's August 16th check. This letter was received by Plaintiff. A copy of the letter is identified as Agreed Exhibit 95.

42. On August 26, 1977, Plaintiff sent a letter to John Dodge of ALPA via United States mail, and the letter was received by Dodge. A copy of this letter is identified as Agreed Exhibit 96.

43. On or about September 15, 1977, Plaintiff sent ALPA a check for $459.10. This check was returned by ALPA. A copy of this check is identified as Agreed Exhibit 97.

44. Plaintiff has not been reinstated to his employment with TWA.

45. No hearing has been held under the ALPA/TWA col-

lective bargaining agreement with respect to Plaintiff's discharge.

46. Since January 1, 1976, the effective date of Section 3-B of the ALPA/TWA collective bargaining agreement, ALPA has sent to TWA certifications of agency shop delinquency under Section 3-B(c) for eight TWA pilots. Subsequent to mailing of the 3-B(c) notice, but prior to discharge, six of these pilots requested from ALPA and were allowed an extension of time, within which to cure their service charge delinquency. All of these pilots then paid the requested amount, and were not discharged from TWA. The remaining two pilots were discharged. One of the two discharged pilots is Plaintiff and the other is James L. Stevens.

Dated June , 1981.

CHARLES C. CALDART
MILES, WAY & CALDART
Attorney for Plaintiff

Dates June 6, 1981

DANIEL S. KOZMA
AIR LINE PILOTS ASSOCIATION, INT'L
1625 Massachusetts Avenue, N. W.
Washington, D. C. 20036
Attorney for Defendant

AIR-LINE PILOTS ASSOCIATION
1625 Massachusetts Ave., N.W. ☐ Washington, D.C. 20036
(202) 347-2211

October 4, 1972
#29118 TWA #2

Mr. J. Dean
326 E. 30th Street
Kansas City, Missouri 64108

Dear Mr. Dean:

We wish to acknowledge your letter of September 20, 1972 advising the Association that you wish to resign from membership.

Recognizing the seriousness of an action such as you contemplate, the Board of Directors in 1950 adopted a policy requiring Local Council Investigation into the factors behind such decision to resign.

We are, therefore, taking the libery of holding up the processing of your resignation until such time as we are able to secure the complete facts in the matter.

We feel that resignation from the Association is a most serious step for any individual pilot. Every effort is being made to build and maintain this Association as a responsible spokesman from the air line piloting profession. Since you evidently intend to remain a member of that profession, we feel you should be interested in the future of this Association.

Your Local Council Officers will be contacting you shortly. In the meantime, we know you will give serious thought to reconsidering this proposed action.

Sincerely,

LaVoy T. Jones, Director
Membership Services Department

By: _____
Air Line Analyst

LTJ:sdm
cc:

[AGREED EXHIBIT 3]

AIR-LINE PILOTS ASSOCIATION
1625 Massachusetts Ave., N.W. ☐ Washington, D.C. 20036
(202) 347-2211

November 14, 1975

TO ALL TWA PILOTS

Gentlemen:

The Agency Shop provision in our new contract becomes effective on 1 January, 1976. While it will have no effect on the vast majority of TWA Pilots, its salient features may be of interest. Beginning on 1 Jan. '76, dues for members at the current rate of 1.35% of "W-2 earnings", or a service charge for representational benefits for non-members at the same rate, must be kept on a current basis as a condition of continued employment for all TWA Pilots on our seniority list. The only exceptions are the few management pilots at, or above, the level of Assistant General Manager-Flying.

The pertinent Section 3B, Agency Shop, reads in part:

"... Each regularly assigned pilot of the Company covered by the Agreement ... shall be required as a condition of continued employment ... to pay or tender to the duly designated official of the Association ... a service charge ...

If the pilot remains delinquent by reason of failure to pay the required sum ... the Staff Vice-President-Labor Relations of the Company or designee shall thereupon take proper steps to discharge such pilot from the service of the Company."

There are three methods available for paying dues. These options will also be available to non-members for payment of their service charge.

A. *Monthly Payroll Deduction*, from the "25th paycheck". Forms for this purpose will be available at Domicile ALPA Field Offices. We urge those of you desiring to use this option to do so at once to insure that it will be effective for the January 25th paycheck. You can, of course, change options, but allow for the time lag. Those already enrolled in this option need not do anything, including any further reading.

B. *Annual in Advance.* All pilots will receive a statement from ALPA listing your charges for the coming year (Dues, Insurance, Assessments; whatever applies). Zeros will be in the "Dues" box for those already on Payroll Deduction. New applicants for payroll deduction (both members and non-members) should so note on the statement and return to ALPA. A finance charge of 1% per month will be added to any balance remaining AFTER the close of January; thus any or all listed obligations can be paid without incurring a finance charge.

C. ***Monthly Payments.*** **The minimum payment listed on the statements sent monthly can be paid each month, including any additional amounts you wish to make at any**

time. The 1% finance charge levied on the balances that remain at month's end, after all payments *received* have been credited, amounts to an effective rate of 0.85% per month, or 10.15% per year. Obviously, the faster you reduce the balances, the less you will pay for finance charges, and the effect will be greatest at the beginning of the year when the balances are highest. Option *A*, above, offers the most convenience at no additional cost.

Attendance, participation at ALPA meetings, and the right to vote, remain a privilege for members only. In fact, most ALPA services (communications, insurance programs, TWA & ALPA Mutual Aid, etc.) will not be available to non-members. However, any and all non-members can become members in good standing, with all of the rights and privileges thereof, following MEC approval, and approval of an "Arrangement Plan" with ALPA. This plan provides for small monthly payments over a long term for repayment of prior outstanding obligations. Payments and term are related to amount owed.

Ask your Council Chairman or write to the Sec./Treas. at the Manhattan, New York ALPA office for details of your plan. this is a painless way to quickly become a member in good standing.

Fraternally,

Robert C. Sherman, Sec./Treas.
TWA Master Executive Council

RCS:aw

Att:(2)

[AGREED EXHIBIT 11]

AIR-LINE PILOTS ASSOCIATION
1625 Massachusetts Ave., N.W. ☐ Washington, D.C. 20036
(202) 347-2211

December 19, 1975

TO NON-ALPA MEMBERS ON THE
TWA PILOTS' SENIORITY LIST

Gentlemen:

An Agency Shop provision in our new contract becomes effective on January 1, 1976. Beginning on that date, you will become liable for a charge of 1.35% of your "W-2 earnings". Payment of this representational charge must be kept current by one of three options, as a condition of continued employment.

Ther pertinent Section, 3B, Agency Shop, reads in part:

> "... Each regularly assigned pilot of the Company covered by the Agreement ... shall be required as a condition of continued employment . . . to pay or tender to the duly designated official of the Association ... a service charge ...
>
> If the pilot remains delinquent by reason of failure to pay the required sum ... the Staff Vice-President-Labor Relations of the Company or designee shall thereupon take proper steps to discharge such pilot from the service of the Company."

Excepted are a few pilots at, or above, the title of "Assistant General Manager Flying".

The three options available to you are the same three available to members for their dues:

A. *Monthly Payroll Deduction*, from the "25th" paycheck. Two forms for this purpose are enclosed. Return both forms with the billing notice to ALPA-DCA.

B. *Annual in Advance.* Return the enclosed billing form to ALPA with a check for the total listed.

C. *ALPA Monthly Finance Plan.* You may remit monthly by paying at least the minimum amount listed. A finance charge of 1% is added to the balance remaining AFTER the monthly closing date. This charge is equivalent to .84% on the unpaid balances, or 10.15% per annum. Paying more than the minimum will result in a lesser finance charge. After the close of each year, total dues paid is checked against 1.35% of your reported earnings. Any difference will be refunded or billed, as the case may be. Please refer questions to your Local Council Officers, or the undersigned.

Fraternally,

Robert C. Sherman, Sec./Treas.
TWA Master Executive Council

RCS:aw
Encl.

[AGREED EXHIBIT 12]

Air Line Pilots Assc.
1625 Mass. Ave. N.W.
W.D.C. 20036

Gentlemen:

Enclosed is my monthly dole as required by paragraph 3B of the agreement with TWA and ALPA.

I received your letter from John J. Magee dated 17 February 1976 in response to my letter of 22 January 1976 (misdated 22 December), but your attachment mentioned was not enclosed. I call to your attention that 3B(B) of the TWA-ALPA agreement calls for a service charge "for the administration of the agreement . . ." to be payable on the 15th of each month and does not authorize any forms of interest charge that I have objected to and refuse to pay. In addition 367 USC 704 (1961) IAM vs Street and 373 vs 113 (1963) BRAC vs Allen concluded that only charges to administer a contract could be forced upon honest citizenry by opressive Labor Unions.

John L. Dean (From handwritten)

[AGREED EXHIBIT 15]

AIR-LINE PILOTS ASSOCIATION
1625 Massachusetts Ave., N.W. ☐ Washington, D.C. 20036
(202) 347-2211

March 31, 1976

Mr. John L. Dean
326 East 30th Street
Kansas City, Missouri 64108

Dear Mr. Dean:

Your March 15 letter requests ALPA to reduce the service charge imposed upon you so as to exclude collection of sums used for political contributions, bribes, and other "illegal activities". No portion of any sums collected by ALPA as dues or service charges are used to make political campaign contributions, or for any unlawful purposes. We have discussed the Supreme Court cases mentioned in your letter with legal counsel and are advised that those decisions do not require any alteration in your service charge, or in the explanation of its method of billing previously afforded you by letter dated February 17, 1976.

Sincerely,

John J. Magee, Treasurer

JJM:clc

[AGREED EXHIBIT 16]

AIR-LINE PILOTS ASSOCIATION
1625 Massachusetts Ave., N.W. ☐ Washington, D.C. 20036
(202) 347-2211

Mr. John L. Dean
1910 Evergreen Park Drive, SW
Olympia, WA 98502

Dear Mr. Dean:

I am replying to your letter of April 15, 1977, regarding,

among others, your request for an accounting of your share of "TWA's contract negotiation and related costs." As I previously indicated to you in my letter of February 17, 1976, "agency shop is a concept which the Supreme Court of the United States has approved as a legitimate and constitutional method to compel all members in a represented group, whether they are members of the representing union, to participate *equally* in financial support of the union's functions." Consequently, the Association does not allocate collective bargaining and contract administration according to the particular services provided to one pilot or another, but rather apportions the cost equally to all members and non-members employed by carriers which have working agreements with the Association.

As to your concern about the release by TWA to the Association of information pertaining to your income for 1976, this procedure is authorized by the same provisions of the Railway Labor Act which provide the authority for the agency shop. In the absence of a dues check-off agreed to by the non-member, the company and the Association must be able to fulfill the terms of the agency shop provisions in the contract in some other way so as to assure the quality of apportionment of the service charge. The company, therefore, provides us with this information in order that we may adjust the service charge billing estimate to reflect your actual income in the prior year. I am advised by counsel that this agreement is not in violation of your Constitutional or statutory rights.

In conclusion, I wish to advise you that you are seriously in arrears in the payment of your 1976-1977 service charges. Your adjusted service charge for 1976 amounted to $507.79. To date, you have only paid $376.50 toward that charge. Your estimated 1977 service charge is also currently delinquent. You will be receiving your next service charge bill in May. I would urge you remit the amount which you owe to the Association at that time. In the event you do not, I will have no choice but to invoke the provisions of

Section 3-B(B), of the agreement between TWA and ALPA subjecting you to discharge from your employment.

Sincerely,

John J. Magee, Treasurer **[AGREED EXHIBIT 78]**

AIR-LINE PILOTS ASSOCIATION
1625 Massachusetts Ave., N.W. ☐ Washington, D.C. 20036
(202) 347-2211

July 29, 1977

Mr. J. C. Hilly
TWA Vice President — Labor Relations
605 3rd Avenue
New York, NY 10016

Dear Mr. Hilly:

In accordance with the terms of the Agreement between Trans World Airlines and Airmen in the service of Trans World Airlines as represented by the Air Line Pilots Association, International, Section 3 (Agency Shop), the following employee of Trans World Airlines is herby certified to be delinquent in the payment of his service charge to the Association, has been notified of such delinquency and has failed to remit payment within the grace period allowed:

J.L. Dean
1910 Evergreen Park Dr., SW
Olympia, WA 98502

Under the terms of Section 3, Paragraph B of the above Agreement, I request that you proceed with the proper steps to discharge this employee. Please inform me as to the final disposition of this case.

Sincerely,

John J. Magee, Treasurer

JJM:eab

cc: J. P. Donlan, Jr.
V. N. Jones
R. C. Sherman
J. L. Dean

[AGREED EXHIBIT 82]

SECTION 3-B

AGENCY SHOP

(A) Service Charge Liability

Each regularly assigned pilot of the Company covered by the Agreement who fails voluntarily to acquire or maintain membership in the Air Line Pilots Association, shall be required as a condition of continued employment, beginning sixty (60) days after such employment, to pay or tender, to the duly designated official of the Association for each following full calendar month as a regularly assigned pilot, a service charge as a contribution for the administration of the Agreement and representation of such pilot. The service charge for the first month and for each month thereafter shall be in an amount equal to the Association's regular and usual monthly dues uniformly required of the members of the Association. Except as provided in Section 3-C, payment shall be made on the fif-

teenth day of the month for which such service charge is payable. For the purposes of this Section 3-B, a regularly assigned pilot of the Company shall include a Training Captain regularly assigned to a domicile but shall not mean pilots assigned to a Management Position.

(B) Delinquency

If a pilot of the Company who is required by the provisions of Paragraph (A) above to pay the service charge therein specifier becomes at least sixty (60) days delinquent in the payment or tender of such service charge, the Treasurer of the Association shall notify such pilot by registered mail, return receipt requested, copy to the Vice President-Labor Relations, of the Company or his successor or designee, that he is delinquent in the payment of such service charge and is subject to discharge as an employee of the Company. Such notice shall also inform the pilot that he must remit or tender the required payment to the Treasurer of the Association within a period of fifteen (15) days after receipt by him of the notice herein referred to or be discharged.

(C) Certification of Delinquency

If, upon the expiration of the fifteen (15) day period after receipt by him of the notice referred to in Paragraph (B) above, the pilot remains delinquent by reason of failure to pay or tender the required sum, the Treasurer of the Association shall certify in writing to the Vice President-Labor Relations, of the Company or his successor or designee, copy to the pilot, both by registered mail, return receipt requested, that the pilot has failed to make or tender payment within the allowed period and is therefore to be discharged. The Vice President-Labor Relations, of the Company or his successor or designee, shall thereupon take proper steps to discharge such pilot from the service of the Company. Termination shall be effective ten (10) days after receipt by the Company of the notice provided for herein.

(D) Protest Procedure

A Protest by a pilot whose discharge is requested by the Association as a result of an interpretation or application of Section 3-B shall be limited to the following procedure:

(1) A pilot who believes that the provisions of Section 3-B have not been properly interpreted or applied, as they pertain to him, may submit his request for review in writing within five (5) days from the date of receipt of notice by him in the form of his copy of notice to the Company with respect to him as provided in Paragraph (C). Such request must be submitted to the Vice President-Labor Relations of the Company or his successor or designee who will review the protest and render a decision in writing with respect thereto not later than five (5) days following the receipt of the request of review.

(2) The Vice President-Labor Relations of the Company or his successor or designee, shall forwrd his decision to the pilot with a copy to the official of the Association who shall promptly be designated in writing by the Association for this purpose. Said decision shall be final and binding on all interested parties unless appealed as hereinafter provided. If the decision is not satisfactory to either the pilot or the Treasurer of the Association, either may appeal the decision by filing a notice of appeal. Such notice shall be sent to the Company, to the other party and to the National Mediation Board within ten (10) days of the receipt of the decision and must contain a request for the National Mediation Board to provide a list of five (5) neutral referees. A neutral referee may be agreed upon by the pilot and the Association within ten (10) days after receipt of the list of neutral referees.

If the parties cannot agree on a neutral referee, a referee will be chosen from the panel supplied by

the National Mediation Board. The alternate strike method shall be used to select a neutral referee with the pilot initiating the first rejection. Such final selection of a neutral referee shall be accomplished within ten (10) days after receipt of the list of neutral referees. If the parties have not reached agreement by the alternate strike method within the aforementioned ten (10) day period, the first name listed on the five (5) name panel provided by the National Mediation Board shall be designated the neutral referee.

(3) The decision of the neutral referee shall be requested within thirty (30) days after the hearing of the appeal unless otherwise agreed by the pilot and the Association and shall be final and binding on all parties to the dispute. The fees, charges and other reasonable expenses of such neutral referee shall be borne equally by the pilot and the Association.

(E) Status Pending Appeal

During the period in which a protest is being handled under the provisions of Section 3-B and until final decision by the Vice President-Labor Relations, or his successor or designee, the pilot shall not be discharged from the Company nor lose any seniority or other rights under the Agreement solely for the reason of noncompliance with the terms and provisions of Section 3-B.

(F) Discharge

A pilot discharged by the Company under the provisions of this Section shall be deemed to have been "discharged for cause" within the meaning of the terms and provisions of this Section.

(G) Indemnification

The Association agrees that it shall indemnify the Com-

pany and save the Company harmless from any and all claims, awards or judgments (including court costs) awarded to an employee or employees against the Company by virtue of the misinterpretation or misapplication of any of the terms of Section 3-B.

(H) Discharge Delay

Other provisions of Section 3-B to the contrary notwithstanding, the Company shall not be required to terminate the employment of any pilot until such time as the services of a qualified replacement areavailable, provided that in the judgment of the Company such replacement is currently required for the orderly continuation of the Company's operation. The determination of whether a qualified replacement is available shall be the exclusive responsibility of the Company. The Company may not, however, retain any pilot in the service under the provisions of this paragraph for a period of more than four (4) months from the date of the final decision in this case.

CONSTITUTIONAL PROVISIONS

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same office to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peacably to assemble, and to petition the government for a redress of grievances.

FEDERAL STATUTES

Title 28 USC § 1254.
Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted on the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(June 25, 1948, c. 646, § 1, 62 Stat. 928.)

Title 45 U.S.C. § 152, Eleventh.

Eleventh. Union security agreements; check-off. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or

any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted –

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership,

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties), uniformly required as a condition of acquiring or retaining membership, Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, first (h) of this act [45 USCS § 153(h), First division] defining the jurisdictional scope of the first division of the National

Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: Provided, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this act and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs fourth and fifth of section 2 of this act [this section] in conflict herewith are to the extent of such conflict amended.

(May 20, 1926, ch 347, Title I, § 2, in part, 44 Stat. 577; June 21, 1934, ch 691, § 2, in part, 48 Stat. 1186; Apr. 10, 1936, ch 166, 49 Stat. 1189; Jan. 10, 1951, ch 1220, 64 Stat. 1238.)

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